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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/591,060

08/30/2006

Ryusuke Fujiyoshi

DK-US040214

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EXAMINER

ROGERS, LAKIYA G

ART UNIT

PAPER NUMBER

3744

MAIL DATE

DELIVERY MODE

06/30/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/591,060	Applicant(s) FUJIYOSHI ET AL.	
	Examiner LAKIYA ROGERS	Art Unit 3744	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 June 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1,2,4 and 9-18.
 Claim(s) withdrawn from consideration: 3,5-8 and 19-38.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Cheryl J. Tyler/
 Supervisory Patent Examiner, Art Unit 3744

/Lakiya Rogers/
 Examiner, Art Unit 3744

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues (starting on page 13 of the remarks) in regards to claim 2 that the Rhodes patent specifically fails to teach "a heat source side heat exchanger, only the compression mechanism of the compression mechanism and the heat source side heat exchanger being used in common with the first and second utilization side refrigeration circuits". However, this argument has been considered but is not persuasive.

As noted by the applicant on page 13 of the remarks, it would have been obvious to modify the system of Rhodes to include a heat exchanger in the heat source side refrigerant circuit (see page 3 of the final rejection). As explained in the final rejection, the recitation "...only the compression mechanism of the compression mechanism and the heat source side heat exchanger being used (emphasis added) in common..." has been considered a recitation of intended use. Furthermore, the applicant notes in the remarks on page 14 that the aforementioned limitation "positively describes how the parts of the claimed air conditioning system operate". MPEP 2114 states "while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be (emphasis added) distinguished from the prior art in terms of structure rather than function". Contrary to applicants suggestion in the discussion in paragraph 1 on page 15 that the functional limitation has not been given weight, the limitation was specifically addressed in the Final Office action in the explanation as to how the claim has been interpreted hence limited patentable weight has been afforded to the functional recitations. For clarity it should also be noted that the recitation "configured to" alone has not been interpreted as a functional limitation, but the recitation as a whole has been considered a functional recitation. Furthermore, although the "...configured to..." recitations were considered intended use, the recitations were addressed in the art rejection (see at least pages 2 and 3 of the rejection). In summary the patentable weight of the claim language, specifically functional recitations, is determined on a case by case basis. In this particular instance, the system of Rhodes as modified and discussed in the Final Rejection meets the requirements of the claims as currently presented. Accordingly, claims 2, 4, and 9-18 remain rejected as rejected in the Final Office Action.